

FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/171796

PRELIMINARY RECITALS

Pursuant to a petition filed February 02, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a hearing was held on March 17, 2016, at Waukesha, Wisconsin. The case was held open post-hearing to allow the Petitioner's representative to submit proof of expenses incurred on behalf of the Petitioner. The Petitioner's representative was to provide that information to the agency for review. On April 28, 2016, a second hearing was held. The Petitioner's representative had submitted information regarding a funeral trust to the agency. The Petitioner's submitted information regarding a [REDACTED] Account from the nursing facility where Petitioner resides. The Petitioner's representative brought bank statements with her to show expenses incurred on behalf of the Petitioner. The hearing was held open to provide the agency time to review the information. A third hearing was held on May 26, 2016 at which the parties provided an update on their positions.

The issue for determination is whether the agency properly closed the Petitioner's healthcare case for lack of verification.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:
Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County. In 2009, the Petitioner started living with her granddaughter [REDACTED] on [REDACTED] Brookfield. [REDACTED] is also the Petitioner's authorized representative and her rep payee for Social Security. On December 1, 2013, Petitioner was enrolled in Family Care with no monthly premium. Petitioner reported residing on [REDACTED] Brookfield. On December 22, 2013, the Petitioner moved to a nursing facility. Her move was not reported to the income maintenance agency.
2. On October 13, 2014, the agency issued a notice to the Petitioner at her [REDACTED] address that her renewal for healthcare benefits was required to be completed within 45 days. On October 20, 2014, the agency issued a renewal application summary to the Petitioner at her [REDACTED] address requesting that she review the information in the summary and report any changes. The renewal summary indicated that the Petitioner was residing independently in a home or apartment on [REDACTED] Brookfield. On or about November 7, 2014, [REDACTED] signed the renewal summary. She did not report any change in the Petitioner's living arrangement. On December 2, 2014, the agency issued a Notice of Decision to [REDACTED] informing her that Petitioner would continue to receive Family Care with no monthly cost share effective January 1, 2015.
3. On or about October 16, 2015, the agency issued a renewal application summary to the Petitioner at her [REDACTED] address requesting that she review the information in the summary and report any changes. The renewal summary indicated that the Petitioner was residing independently in a home or apartment on [REDACTED] Brookfield. On or about November 7, 2014, [REDACTED] signed the renewal summary. She did not report any change in the Petitioner's living arrangement. [REDACTED] signed the renewal summary on November 23, 2015 indicating all information in the summary was correct and she had no changes to report.
4. On November 18, 2015 and November 30, 2015, the agency issued Notices of Decision to the Petitioner at her [REDACTED] address informing her that her healthcare benefits would end due to failure to complete her renewal. The notices were returned to the agency on or about December 10, 2015 as undeliverable and no forwarding address was provided. The notices were also issued to [REDACTED].
5. On December 1, 2015, the agency issued Notices of Decision to the Petitioner and [REDACTED] informing them that the Petitioner would continue to receive Family Care benefits with no monthly cost share effective January 1, 2016.
6. On December 11, 2015, the agency issued Notices of Proof Needed to the Petitioner and [REDACTED] requesting verification of the Petitioner's living arrangement. The due date for the requested information was December 21, 2015.
7. On December 23, 2015, the agency issued a Notice of Decision to [REDACTED] informing her that the Petitioner's enrollment in Family Care and request for MA was denied due to failure to provide requested verification.
8. On January 5, 2016, [REDACTED] contacted the agency and informed them that the Petitioner is residing in a nursing facility. She stated that the MCO, Community Care, was aware of the Petitioner moving to the facility in 2013 and though that Community Care had notified the income maintenance agency at that time.
9. On January 8, 2016, the agency issued a Notice of Proof Needed to Petitioner and [REDACTED] requesting verification of Petitioner's bank account with [REDACTED]. The Notice also stated: "YOU FAILED TO REPORT FOR THE OVER TWO YEARS THAT [REDACTED] MOVED INTO A

NURSING HOME. THERE WILL BE AN OVERPAYMENT ISSUED AND YOU WILL OWE FOR THAT PERIOD OF TIME. FOR NOW, YOU MUST PROVIDE ALL BANK STATEMENTS FROM 12/2013 TO PRESENT ALONG WITH TRANSACTION HISTORY. ANY WITHDRAWALS OR SPENDING MUST HAVE A COMPLETE SUPPORTING PAPERTRAIL PROVING WHAT THE FUNDS WERE SPENT ON. HER CARE WAS PAID FOR, SO SHE DID NOT HAVE ANY EXPENSES.” The due date for the requested verification was January 18, 2016.

10. On January 22, 2016, the agency issued a Notice of Decision to the Petitioner and [REDACTED] informing them that Petitioner’s application for Institutional MA was denied due to failure to submit requested verification.
11. On February 2, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.
12. On March 18, 2016, the Petitioner’s representative set up a burial trust for the Petitioner. Before submitting the document to the agency, the Petitioner’s representative altered the date of the contract to make it appear that the trust was established March 18, 2011 or March 18, 2014.
13. On May 2, 2016, the agency received information from [REDACTED] that the Petitioner’s [REDACTED] account was closed on October 30, 2015. Petitioner’s representative had submitted bank statements to the agency showing the Petitioner’s social security deposit into the account after October 30, 2015. The Petitioner’s representative altered the dates of the bank statements.
14. Bank statements from Petitioner’s representative’s bank account at [REDACTED] indicate that Petitioner’s social security check of \$424 was deposited into the Petitioner’s account on November 3, 2015.

DISCUSSION

MA certification is available if all conditions of eligibility-- including meeting the asset test are providing necessary, requested verification, are satisfied. Wis Admin. Code § DHS 103.08(1). Certification pursuant to an application can be made retroactive for up to three months. For a single person seeking Institutional MA coverage, the asset limit is \$2,000. Wis. Stat. §49.47(4)(b). See also MA Eligibility Handbook (MEH), Table 39.4 (EBD), viewable online at <http://www.emhandbooks.wi.gov/meh-ebd/>.

It is the responsibility of the applicant or member to provide verification of income and assets. The agency also has a responsibility to use all available data exchanges to verify information. Medicaid Eligibility Handbook (MEH), §20.5. The agency must also assist the member in obtaining verification if she has difficulty in obtaining it. Id. If an applicant or member does not have the ability to produce verification, the agency must use the best information available to process the application. Id. Eligibility cannot be denied when the applicant or member does not have the ability to produce verification. Id. The MEH states as follows:

Use the best information available to process the application or change within the time limit and issue benefits when the following two conditions exist:

1. The member does not have the power to produce verification, and
2. Information is not obtainable timely even with your assistance.

In this situation, seek verification later. When you have received the verification, you may need to adjust or recoup benefits based on the new information. Explain this to the member when requesting verification.

Id.

At the time that the agency initially denied the Petitioner's application on January 22, 2016, Petitioner and ■■■ had not submitted requested verification regarding Petitioner's bank account at ■■■■■■■■■■. At the first hearing, ■■■ was given an additional opportunity to present bank statements and evidence regarding the Petitioner's income and assets and Petitioner's living expenses. At the time of the second hearing, ■■■ presented bank statements as evidence that ■■■ had expended money for the Petitioner's living expenses. ■■■ also produced a burial trust to show that money had been expended for the trust. Subsequent to the second hearing, the agency determined that at least some of the bank statements submitted by ■■■ and the burial trust agreement had been altered by ■■■. ■■■ conceded at the hearing that she altered the documents.

Based on the evidence presented, I conclude that the agency properly closed the Petitioner's Family Care case and properly denied the Petitioner's application for Institutional MA based on a failure of ■■■ to submit requested verification. ■■■ was not forthcoming about what happened to the Petitioner's income during the time that the Petitioner was residing in a nursing home. She submitted falsified documentation in an effort to claim that some of the money had been used to purchase a burial trust. She submitted bank statements showing that the money continued to be deposited into an account in the Petitioner's name when that account had been closed.

I note that a new application for Institutional MA has been submitted on behalf of the Petitioner since the beginning of these proceedings. That application is not the subject of this decision. It is my understanding that the agency has held off on processing the application due to this appeal. As dicta, the policies cited above require the agency to process the application based on the best information available if the Petitioner and ■■■ do not produce requested verification. It would appear that the agency has evidence to determine that there has been a divestment due to ■■■'s actions and also that the agency may have cause to establish an overpayment due to failure to report the change in residence. The Petitioner may be unaware of ■■■'s actions that may result in these penalties. If so, the agency may want to consider a referral to Adult Protective Services for elder financial abuse if the circumstances warrant.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's application on January 22, 2016 for failure to produce requested verification of assets and income.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

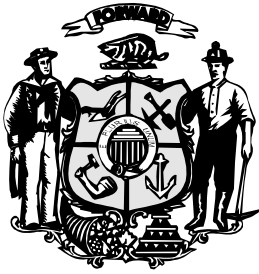
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 27th day of June, 2016

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 27, 2016.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability